Tips for Investigating Drug Diversion Cases

1. Evaluate the target's practice – inside & out. ❖**Inside the Practice:** Lack of qualified office staff, like RNs, NPs, etc., spells trouble. So does the lack of diagnostic equipment and lab tools, and the absence of referrals to specialists, especially when target(s) are family or general practitioners. Find out who is doing the actual service vs. whose name it is being billed in. ❖**Outside the Practice:** Parking lot parties, special door treatments, and abnormal business hours reflect lack of legitimate medical purpose for so-called patient visits. ❖**Once your investigation is public:** interview all nearby home/shop owners and find out what they know and think about your target's practice (carefully consider your questions if a nearby shop is a pharmacy).

2. Undercover Operations: ❖Agents are better than defendants seeking 5K motions. ❖Use fake insurance cards so you can track health care fraud issues. ❖Remember, it usually takes several visits to gain the doctor's confidence. ❖Avoid the "I'm just here for narcotics" story. Instead, use vague symptoms.

3. Trash Runs & Video Surveillance: ❖Consider conducting trash runs on key locations (houses of all employees and the physician, houses of patients getting the most prescriptions). ❖Consider using a pole camera to record cars and people coming and going from the targeted clinic or pharmacy.

4. Request and Compile Pharmacy Surveys on the Targeted Practice/Physician. For survey parameters, use the top 30 to 50 patients receiving Schedule II controlled substances.

5. Search Warrants: If you seize it, you have to read it, understand it, and make others understand it. ❖Look for "frequent flyers" or those that use and bill for many medical services. ❖Check with local law enforcement to see who has been busted for selling or possessing pills, and determine whether these people are associated with your target. ❖Sample a reasonable number of "patient" files. ❖Do not forget to look in the trash. Look for appointment books, drug representative files, sign-in logs, cash logs, call logs, pre-signed prescription pads, "smoking sticky notes" -, i.e., "Medicare does not pay for X so bill Y, signs posted in the waiting room, pharmacy advertisements in the waiting room, documentation of anonymous complaints regarding "patients" selling prescription drugs or abusing drugs, death certificates. ❖Make sure you apply for a search warrant to search and seize computers, including the physician's laptop. You may also want to search and seize PDAs. Mirror image all computer hard drives. ❖Serve simultaneous grand jury subpoenas for everything you are searching for (in particular, the original patient files relating to your pharmacy survey) – often bookkeepers, physicians, and office managers have relevant documents at home. The "Required Records" exception to the Fifth Amendment Privilege may apply.

6. Find out who knows about and works or has worked for the target physician(s). Order quarterly employment reports. Interview the target's ex-spouses or boy or girlfriends. Check out former office staff carefully.

6. Determine whether the target physicians(s) worked previously with other physicians, and find out why they severed the relationship. Subpoena personnel files of the target physician's former employment.

7. Legitimate pain clinics/offices have records reflecting good evaluation and management practices, meaning they document patient history and office visits very carefully. ❖Decide whether the target uses: (a) prescribing practices exhibiting slow escalation to opioids, (b) drug and pharmacy contracts, (c) routine drug testing (urine and blood), and (d) routine pill counts. ❖Determine whether the target uses: (a) physical therapy plans and programs, (b) diagnostic testing, and (c) psychological counseling for chronic pain patients. ❖If your target is not doing these things, he/she is not likely to be a true pain specialist or even part of a true pain specialty group. Absence of these things is good evidence of lack of a legitimate medical purpose.

8. Watch out for "cookie-cutters" and "cocktails": ❖**A cookie-cutter physician is** one who treats virtually every patient the same – from paperwork, to diagnosis, to treatment, including the prescription of opioids. ❖**Cocktails are the combination of drugs** many pill shop docs prescribe during each "patient visit," such as Soma, Xanax, hydrocodone, oxycodone, and Methadone. The true treatment of pain often requires polypharmacy (multiple drugs), but not in these combinations. ❖Cocktails lead to overdoses and suggest a problem prescribing pattern.

9. Involve private insurance companies: ❖Many have special investigative units. Ask them to provide as many records to you as they can, including payment history, pharmacy runs, remittance advices (the check that goes to the doc), and negotiated checks, if they exist. ❖Review these documents for prescribing and visit patterns, and for pharmacy patterns. Remember to 6E all of your agents for each case and be careful about revealing grand jury material to private insurance investigators. This avoids the appearance of the private insurance company (with a large $$ interest in case) driving the investigation.

10. Look at a target physician's relationship with nearby pharmacies carefully. ❖Does the target have a pharmacy parked next door or in-house? ❖Does the target refer patients to a single pharmacy? Does the target advertise a particular pharmacy inside his/her clinic's waiting room? ❖Are there kickback issues? ❖Does the pharmacy build in cash cuts for certain opioid prescriptions (i.e., does the pharmacy increase the price for an amphetamine (Adderall®), oxycodone (OxyContin®, Percocet®), or hydrocodone (Lortab®, Norco®) product if the customer is paying cash?).

11. Identify the pharmaceutical companies calling on your target and get the names of their representatives. ❖Purdue Pharma markets OxyContin®. ❖Check your Physician's Desk Reference for manufacturers' contact information. ❖Subpoena the appropriate companies and seek the call notes logged by their representatives concerning visits to physicians, pharmacies, and individual pharmacists. Also make sure to ask for 30-day goal sheets and any taped pitches done by reps in your area.

12. Pharmaceutical companies sponsor continuing education events. ❖Subpoena this information, including payment arrangements, training materials, attendee lists, etc. ❖Make sure your interview questions for your target's prior (and later when investigation is public, current) office staff includes questions regarding relationships with pharmaceutical representatives.

13. Talk with the Coroners/Medical Examiners in your community. ❖These people have amazing investigative files, and you will need their help to preserve evidence if you are dealing with overdose, single-car accident, or suicide deaths of your target's so-called patients. ❖First responders often do not handle prescription overdose deaths as suspicious. Make sure you assign an agent to treat suspicious overdoses as a homicide until proven otherwise.

14. Know your state's pain treatment guidelines and practice standards. (They have a website).

15. If your state has a prescription monitoring system, use it. ❖If your state does not, encourage the development of one.

16. Be cautious with experts, and professional organizations, many have ties to pharmaceutical companies that need to be disclosed up front.

17. Combine forces with your OCDETF lawyers, busts of local street consumers & dealers can lead to good information on your target doc and distribution chains. For example, a street dealer patient can give you good intel on how to position your undercover officer, what to say, etc., to the doctor.

A FEW TIPS FOR PREPARING THE CASE FOR AN EXPERT AND INDICTMENT:

1. After gathering pharmacy profiles and search warrant documents, screen these files to decide which ones will make the best counts in the indictment. ❖ Establish an organizational system for the files and documents you will need at trial. There may be a reason to put documents from different sources into chronological order. If so, make sure you develop a labeling system to designate the source of each document, i.e., subpoenas versus search warrant.

2. When labeling your documents, make sure you take appropriate steps to safeguard medical information. Decide whether you need to redact any medical or other personal information. ❖You may want to use a unique number (or use the file number in the physician's system), instead of the patient's name. You may also want to label your search warrant and subpoena documents with codes like "SW 9/18/99" or "GJSub#123–11/12/99." Whatever system you choose, be consistent. ❖ After labeling your documents, make a copy set to be used for scanning the documents and burning their images to a CD. Also, print a copy of the scanned file.

3. To set up review files for your expert, have the case agent(s) (and hopefully you will have an RN available) review the medical files and compile detailed summaries of their contents. ❖ You should enter

the summary into a database and include fields for office visit and prescription pick-up dates, corresponding patient complaints, the physician's diagnoses and office note, entries in the chart regarding alcohol or drug abuse, allergies, prior serious illnesses and surgeries, every prescription issued, referrals and consultations to/from/with other physicians, and chronic pain contracts, urine and blood screens, pill counts, and "one stop" agreements (one physician, one pharmacy). ❖ The AUSA should review these summaries and print a checklist from the database. The check list should include: the date of visit, physician comments (office notes), drugs prescribed and dosing information (quantity and strength), and a row for "a yes or no" regarding "legitimate medical purpose." This check list is for the expert to review and say whether the target physician issued the prescription for a legitimate medical purpose. ❖ **Send the expert a copy of each patient's file and corresponding checklist. Put this information in a notebook for the expert. Having the expert review the file is important. Reviewing the summary is not sufficient.**

4. Instructions for the expert: Make sure the expert knows not to mark on the copy of the patient file. Instead, have the expert mark on the checklist and make a short summary of his or her findings as to each patient.

5. Reviewing the expert's work: The AUSA should review the expert's work. After completing the expert witness process, prepare all of your materials and determine which documents can be presented through a summary (Rule 1006) exhibit.

6. Presenting the indictment to the grand jury: Construct an organizational system for your counts, i.e., by patient and then by drug and date. It may help to use a notebook for each patient file you will use for indictment counts. This notebook should contain a copy of the patient's file, pharmacy survey results, and related search warrant and grand jury records, and an exhibit summary.

Drug Diversion Websites:

Drug Enforcement Admin.: www.dea.gov
Drug Enforcement Admin.-Diversion Division: www.deadiversion.usdoj.gov
White House Drug Policy: www.whitehousedrugpolicy.gov (great links)
National Institute on Drug Abuse: www.nida.nih.gov
American Academy of Addiction Psychiatry: www.aaap.org
Drug Court Information: www.american.edu/spa/justice/drugcourts
Drug Court Documentation: www.rand.org/multi/dprc
National Drug Intelligence Center: www.usdoj.gov/ndic
Food & Drug Admin.: www.FDA.gov (See Center for Drug Research)

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